

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 22, 2005

IN RE:

PETITION OF ON-SITE SYSTEMS, INC.
TO AMEND ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY

DOCKET NO.
03-00329

PETITION OF TENNESSEE
WASTEWATER SYSTEMS, INC. TO
EXPAND ITS SERVICE AREA TO
INCLUDE AN AREA KNOWN AS
SEVIER COUNTY

DOCKET NO.
04-00045

MOTION TO REVIEW INITIAL ORDER OF HEARING OFFICER ISSUED ON
FEBRUARY 4, 2005

On February 4, 2005 the Hearing Officer assigned to hear the above-styled dockets filed the *Initial Order Approving In Part, and Denying in Part, Petition to Amend Certificate of Convenience and Necessity* ("Initial Order"). Through this motion, I request that the panel pursuant to Tenn. Code Ann. §4-5-315(a) review the Hearing Officer's *Initial Order* by addressing the following issues:

- (1) Did the Hearing Officer correctly determine that "it is reasonable to construe the term 'utility water service,' as used in Tenn. Code Ann. §6-51-301(a)(1998) as including sanitary sewer service"?
- (2) Did the Hearing Officer correctly determine that granting a certificate of convenience and necessity ("CCN") places "additional legal and administrative burdens on private companies who later seek to provide service in the area covered by the CCN"?

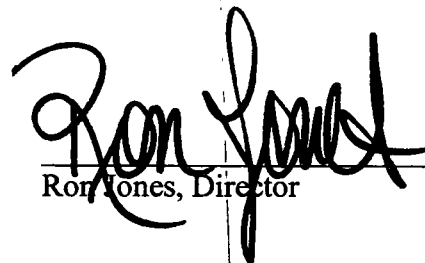
I request review of the first issue, did the Hearing Officer correctly determine that "it is reasonable to construe the term 'utility water service,' as used in Tenn. Code Ann. §6-51-301(a)(1998) as including sanitary sewer service," because the *Initial Order* reaches a different

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conclusion than Attorney General Opinion No. 04-134. In August 2004, the Attorney General reviewed Tenn. Code Ann. §6-51-301 and determined that "a court is likely to conclude that the term 'utility water service' as used in Tenn. Code Ann. § 6-51-301(a) does not include a sanitary sewer system."¹

The second issue, did the Hearing Officer correctly determine that granting a CCN places "additional legal and administrative burdens on private companies who later seek to provide service in the area covered by the CCN," should be reviewed to avoid any confusion as to the future application of Tenn. Code Ann. §65-4-203. Specifically, it could be argued that the Hearing Officer's *Initial Order* stands for the proposition that Tenn. Code Ann. §65-4-203 applies when a public utility attempts to obtain a certificate of convenience and necessity for an area that is included within the certificated area of another public utility regardless of whether the facilities of the public utilities would be in competition with each other. The panel should determine whether this is the correct precedent to be established by the resolution of these dockets.

For the foregoing reasons, I move that the panel review the two issues set forth above. Further, I move in an effort to expedite this appeal that if the parties wish to file briefs and present oral arguments that briefs be filed by no later than **Monday, March 28, 2005** and that oral arguments be presented following the Authority Conference on **Monday, April 4, 2005**.


Ron Jones, Director

¹ Tenn. Op Atty. Gen No. 04-134, 2004 WL 2077452, p. 2 (August 20, 2004)